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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,628	03/01/2004	Donald A. Stevens	4417-040172	1336

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EXAMINER
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LAUX, JESSICA L

ART UNIT	PAPER NUMBER
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3635

MAIL DATE	DELIVERY MODE
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11/26/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/790,628

**Applicant(s)**

STEVENS, DONALD A.

**Examiner**

JESSICA LAUX

**Art Unit**

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 12-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 10, 11 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark (1309241) in view of any of US Patents 1112181, 5172527, 3496691, 3417519, 764989, 2001733, and 5259157.**

Regarding claims 1, 9-11: Clark discloses a lath for use with a frame member for a structural panel comprising:

- a) a generally planar sheet having a front side and a back side (as seen in figure 1),
  - b) a plurality of ribs (1, 2, 3) formed within the sheet
    - i) wherein the ribs protrude from the back side of the sheet (as seen in figure 1),
    - ii) wherein each rib has a profile with a first side (6, 9, 11), a second side, 7, 10, 12) and a connector segment (13) therebetween, wherein the connector segment is located furthestmost from the back side of the sheet;

iv) wherein the first side and the second side are spaced apart from one another from the back side to the connector segment to define a hollow interior (as seen in the figures) and where each rib has a profile shaped to resiliently snap into and be positively retained within an opening of a frame member;

c) a plurality of segments (separated by 16 as seen in figures 1-2) with slats (14, 15) extending through the sheet for adapting the sheet to receive and retain thereupon a structural coating.

Clark does not disclose that the first and second sides diverge from one another as they extend away from the back side.

US Patents 1112181, 5172527, 3496691, 3417519, 764989, 2001733, 5259157 all disclose metal lath having a generally planar sheet having front and back sides and a plurality of ribs, having first and second sides and a connecting segment forming a hollow interior, protruding from the back side:

iii) wherein each of the first side and the second side diverge from one another as they extend away from the back side and then converge; where the maximum divergence is at a maximum height; and

wherein the width of each rib has a profile shaped to resiliently snap into and be positively retained within an opening of a frame member (as seen in the respective figures).

Additionally US Patents 3496691, 764989, 1309241 disclose that it is known to have ribs having a plurality of holes (as seen in figures 6, 7, 9) extending therethrough to provide pressure relief to any structural coating that may be applied to the sheet.

Because the references teach metal laths having ribs, with holes, protruding from the back side, it would have been obvious to one of ordinary skill in the art to substitute one known rib design for the other to achieve the predictable result of structurally stable metal lath usable in various applications.

Regarding claims 2-3: The lath in accordance with claim 1, wherein the sheet is constructed from a thin pliable material, metal (page 2, lines 1-9).

Regarding claim 4: The lath in accordance with claim 1, wherein the segments are adjacent to one another and wherein the slats within adjacent segments are oriented differently to securely engage any structural coating that may be applied to the sheet (as seen in figures 1-2).

Regarding claim 5: The lath in accordance with claim 4, wherein the slats within a segment are parallel to one another (as seen in figure 2).

Regarding claim 6: The lath in accordance with claim 5, wherein the sheet has a longitudinal axis, each slat is along a line to define a slat vertical angle with the longitudinal axis, and wherein the slat vertical angle formed by the slats in one segment are equal and opposite to the slat vertical angle formed by the slats in an adjacent segment (as seen in figure 2).

Regarding claim 7: The lath in accordance with claim 1, wherein, when viewed in section, each segment of slats forms a slat planar angle with the longitudinal axis and wherein the planar slat angle of the slats in one segment is equal to and opposite the slat planar angle formed by the slats in an adjacent segment (as seen in figures 1-2).

Regarding claim 8: The lath in accordance with claim 1, wherein a plurality of divots (at 16) are formed within the front side of the sheet to provide protrusions (16) from the back side of the sheet, such that the sheet may be spaced from any flat surface upon which it may be applied.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSICA LAUX whose telephone number is (571)272-8228. The examiner can normally be reached on Monday thru Thursday, 9:00am to 5:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./

Application/Control Number: 10/790,628

Page 6

Art Unit: 3635

Supervisory Patent Examiner, Art Unit 3635

/J. L./

Examiner, Art Unit 3635